

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

EXP GROUP LLC,

Plaintiff,

v.

CFK PRODUCE CORP., and KOJI UENO,

Defendant.

NOT FOR PUBLICATION
MEMORANDUM AND ORDER
ADOPTING REPORT AND
RECOMMENDATION

19-CV-5083 (LDH) (RML)

LASHANN DEARCY HALL, United States District Judge:

On March 24, 2021, this Court adopted in full Magistrate Judge Robert M. Levy’s report and recommendation (the “February 2021 R&R”), recommending that that EXP Group LLC’s (“Plaintiff”) motion for default judgment be granted in part and denied in part. (February 2021 R&R, ECF No. 47.) Specifically, the Court ordered that default judgment be entered against CKF Produce Corporation and Koji Ueno (together “Defendants”) with respect to liability, and that the determination as to damages, attorney’s fees, and costs be deferred pending liability and relief being addressed as to Katheryn De La Rosa. By stipulation and order dated March 12, 2021, De La Rosa was dismissed from this action. Accordingly, by order dated March 24, 2021, the Court referred the outstanding determination of damages, attorney’s fees, and costs to Judge Levy for report and recommendation. On May 18, 2021, Judge Levy issued his report and recommendation (the “May 2021 R&R”), recommending that plaintiff’s requested damages be awarded in part. (May 2021 R&R, ECF No. 55.) Specifically, Judge Levy recommends that Plaintiff be awarded \$425,129.50 in unpaid principal, \$45,495.78 in pre-judgment interest, post-judgment interest, and \$14,315 in attorney’s fees., and that Plaintiff not be awarded the requested sum for costs. (*Id.*) No party objected.

STANDARD OF REVIEW

When deciding whether to adopt a report and recommendation, a district court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C). The Court conducts a de novo review of those portions of a report and recommendation to which a party submits a timely objection. *Id.* “To accept those portions of the report to which no timely objection has been made, ‘the district court need only satisfy itself that there is no clear error on the face of the record.’” *Estate of Ellington ex rel. Ellington v. Harbrew Imports Ltd.*, 812 F. Supp. 2d 186, 189 (E.D.N.Y. 2011) (quoting *Urena v. New York*, 160 F. Supp. 2d 606, 609–10 (S.D.N.Y. 2001)).

DISCUSSION

The court assumes familiarity with the facts of this action and will not reproduce them here. The Court has reviewed the chart upon which Judge Levy based his damages calculations as well as the underlying invoices submitted by Plaintiff in support of its damages calculations. (May 2021 R&R at 6-7; (Pl.’s Mem. at 9, ECF No. 32-10; Calculations of Interest Chart, attached as Ex. E to the Gentile Decl., Dkt. No. 32-8; Invoices, annexed as Ex. A to the Serafino Decl., Dkt. Nos. 32-4, 32-5, 32-6.) The Court finds error in the amount of principal calculated in the May 2021 R&R and the interest owed on the unpaid balance. Specifically, the Court notes that the invoice amounts total \$426,533.50, not \$425,129.50. Further, with respect to order numbers 227914, 228253, and 228286, the Court notes that the number of days between the date the invoices became past due and March 1, 2021, is incorrect in the May 2021 R&R. The Court has produced below a corrected chart of pre-judgment interest damages.

<u>Invoice Date</u>	<u>Order Number</u>	<u>Payment Due Date</u>	<u>Invoice Amount</u>	<u>Number of Days</u>	<u>Per Diem Interest</u>	<u>Interest Owed</u>
6/29/2019	218126	7/9/2019	\$2,376.00	235	\$1.17	\$275.36
7/1/2019	218157	7/11/2019	\$12,009.00	233	\$5.92	\$1,379.88
7/1/2019	218249	7/11/2019	\$1,872.00	233	\$0.92	\$215.10
7/2/2019	218621	7/12/2019	\$12,530.00	232	\$6.18	\$1,433.57
7/3/2019	219029	7/13/2019	\$13,652.00	231	\$6.73	\$1,555.21
7/5/2019	219440	7/15/2019	\$15,940.00	229	\$7.86	\$1,800.13
7/6/2019	219781	7/16/2019	\$17,159.50	228	\$8.46	\$1,929.39
7/6/2019	219784	7/16/2019	\$2,688.00	228	\$1.33	\$302.23
7/8/2019	220174	7/18/2019	\$18,095.00	226	\$8.92	\$2,016.72
7/8/2019	220177	7/18/2019	\$2,250.00	226	\$1.11	\$250.77
7/9/2019	220564	7/19/2019	\$19,867.00	225	\$9.80	\$2,204.42
7/10/2019	220928	7/20/2019	\$2,592.00	224	\$1.28	\$286.33
7/10/2019	220960	7/20/2019	\$11,323.00	224	\$5.58	\$1,250.80
7/11/2019	221430	7/21/2019	\$13,861.50	223	\$6.84	\$1,524.39
7/11/2019	221435	7/21/2019	\$1,296.00	223	\$0.64	\$142.52
7/11/2019	221473	7/21/2019	\$882.00	223	\$0.43	\$97.00
7/12/2019	221927	7/22/2019	\$9,642.00	222	\$4.75	\$1,055.60
7/13/2019	222305	7/23/2019	\$20,695.00	221	\$10.21	\$2,255.47
7/15/2019	222643	7/25/2019	\$11,428.00	219	\$5.64	\$1,234.22
7/16/2019	222943	7/26/2019	\$12,010.00	218	\$5.92	\$1,291.16
7/17/2019	223469	7/27/2019	\$15,362.00	217	\$7.58	\$1,643.94
7/18/2019	224022	7/28/2019	\$14,077.00	216	\$6.94	\$1,499.49
7/19/2019	224394	7/29/2019	\$13,101.00	215	\$6.46	\$1,389.06
7/20/2019	224878	7/30/2019	\$14,107.25	214	\$6.96	\$1,488.80
7/22/2019	225248	8/1/2019	\$15,109.00	212	\$7.45	\$1,579.61
7/23/2019	225625	8/2/2019	\$17,537.50	211	\$8.65	\$1,824.86
7/24/2019	226088	8/3/2019	\$10,623.25	210	\$5.24	\$1,100.16
7/25/2019	226641	8/4/2019	\$13,552.00	209	\$6.68	\$1,396.78
7/26/2019	227085	8/5/2019	\$5,978.00	208	\$2.95	\$613.20
7/27/2019	227551	8/6/2019	\$12,068.00	207	\$5.95	\$1,231.93
7/29/2019	227914	8/8/2019	\$14,225.00	205	\$7.02	\$1,438.09
7/30/2019	228253	8/9/2019	\$7,930.00	204	\$3.91	\$797.78
7/30/2019	228286	8/9/2019	\$1,824.00	204	\$0.90	\$183.50
7/31/2019	228651	8/10/2019	\$12,154.50	203	\$5.99	\$1,216.78
8/1/2019	229179	8/11/2019	\$12,521.00	202	\$6.17	\$1,247.30
8/2/2019	229741	8/12/2019	\$10,390.00	201	\$5.12	\$1,029.89
8/3/2019	230161	8/13/2019	\$9,968.00	200	\$4.92	\$983.15
8/5/2019	230650	8/15/2019	\$13,734.00	198	\$6.77	\$1,341.04
8/6/2019	231017	8/16/2019	\$10,104.00	197	\$4.98	\$981.61
			<u>Total =</u>			
			<u>\$426,533.50</u>			
						<u>Total =</u>
						<u>\$45,487.24</u>

Accordingly, the Court awards Plaintiff \$426,533.50 in principal and \$45,487.24 in pre-judgement interest. The Court finds no error in Judge Levy's May 2021 R&R with respect to attorney's fees, post-judgment interest, and costs. Consistent with Judge Levy's the Court awards Plaintiff \$14,315 in attorney's fees, post-judgment interest, and declines awarding Plaintiff its requested costs.

CONCLUSION

For the foregoing reasons, Judge Levy's May 2021 R&R is ADOPTED IN PART as the opinion of this Court. Plaintiff is awarded \$426,533.50 in principal, \$45,487.24 in pre-judgement interest, \$14,315 in attorney's fees, and post-judgment interest as prescribed by 28 U.S.C. § 1961. Plaintiff's requests for costs is DENIED. Plaintiff is directed to serve a copy of this Memorandum and Order on the defaulting defendants by first-class mail, and to file proof of service with the Court. Further, the Clerk of Court is respectfully directed to enter judgment consistent with this Memorandum and Order and close this case.

SO ORDERED.

Dated: Brooklyn, New York
March 31, 2022

/s/ LDH
LASHANN DEARCY HALL
United States District Judge